

## **REMARKS**

### **I. Summary of the Office Action and this Reply**

Applicants have further reviewed the above identified application in light of the Office Action dated May 23, 2005. Claims 1, 3-6 and 8-12 remain presented.

Claims 1, 10 and 12 are the only independent claims.

Claims 1-5 and 8-12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,006,264 (Colby) in view of “the Applicants Admitted Prior Art” (Office Action; paragraph 9).

Independent claims 1, 10 and 12 have been amended to define still more clearly what Applicants regard as their invention, in terms which distinguish over the art of record.

### **II. The Colby Prior Art Reference**

Colby relates to a method and system for directing flow between a client and a server that includes some automation of the process of feeding a load balancing algorithm with various parameters for each server. In particular, Colby utilizes an Intelligent Content Probe “whose job is to populate the CSD [Content Server Database] with server and content information by probing servers for specific content that is not found in the CSD during a flow setup” (Colby; col. 7, lines 4-7).

### **III Response to Rejections based on Prior Art**

M.P.E.P. §2143 lists three requirements for a proper 35 U.S.C. § 103 rejection based on obviousness, namely:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Claim 1 recites in part that the configuration file is stored in a “local memory” and that the parameters contained in these configuration files comprise “session affinity rules”. Newly amended claim 1 further recites that these session affinity rules have been formatted into a markup language supported by the load balancer. Support for this newly added feature is found in the specification, inter alia, at page 11, lines 14-18:

“The load balancer issues a GET command for the configuration file for each server in the farm. For each positive response to this request, the information is formatted into the markup language supported by the load balancer and returned to the load balancer.”

The prior art fails to disclose or make obvious this recitation. As described in the Background of the Invention section of the present application, session affinity are rules for attempting to send different requests in a given session to the same server clone in a server group, when possible, and are significant parameters in developing a load balance scheme (Page 9, lines 24-26).

The Office Action specifically notes “Colby fails to expressly disclose: The parameters comprising session affinity rules” (paragraph 4, page 7). The Office Action goes on to state that while the parameters utilized by Colby do not include session affinity rules, it would be obvious to do so because “session affinity rules were well known in the art at the time of the present invention” (page 7, lines 4-5), referencing the applicants’ discussion of the prior art on page 7, lines 14-21 of his specification.

However, the existence in the prior art of session affinity rules alone is insufficient basis for the present obviousness rejection. The mere presence of the claimed elements in various prior art references does not render the claimed invention obvious. “In order to render a claimed apparatus or method obvious, the prior art must enable one skilled in the art to make and use the apparatus or method” *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F. 2d 1547, 13 USPQ2d 1301 (Fed. Cir. 1989).

Colby fails to teach or suggest use of affinity information, much less a means by which affinity information can automatically be provided to a load balancer. In particular, Colby fails to teach or suggest the feature of properly formatting the session affinity data into “markup

language that is supported by the load balancer”, as recited in each of the application’s independent claims.

That session affinity information and its importance were arguably well-known at the time argues in favor of applicants’ position that Colby did not have the means to incorporate this “session affinity” feature of claim 1 into his invention. Consequently, the §103 obviousness rejection of claim 1 fails the test of M.P.E.P. quoted above. Particularly, the alleged knowledge of session affinity rules in the prior art still leaves the prior art lacking a teaching of how to incorporate them into Colby’s system of automating feeding a load balancing algorithm with server parameters when those parameters are session affinity rules. At a minimum, there is no suggestion in the prior art to store the session affinity data locally and to format this data into a markup language supported by the load balancer. Furthermore, the second prong of the test fails as there was no reasonable expectation of success of combining Colby’s teachings with the use of session affinity information.

Applicant submits that neither Colby alone, nor Colby in combination with Applicants’ discussion of the prior art, teaches or fairly suggests the features of claim 1 where “session affinity rules formatted into markup language supported by the load balancer” are obtained by the load balancer from a plurality of server configuration files. Accordingly, claim 1 is deemed patentable over Colby. Claims 10 and 12 also contain this feature and are deemed patentable over Colby for at least the same reasons.

A review of the other art of record has failed to reveal anything that would remedy the deficiencies of the art discussed above. Those claims are therefore believed patentable over the art of record.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

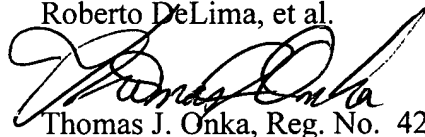
#### **IV. Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Respectfully Submitted,

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By:

A handwritten signature in black ink, appearing to read 'Thomas J. Onka', written over a horizontal line.

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